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## FISCAL IMPACT REPORT

**SPONSOR** Cisneros      **DATE TYPED** 1/26/2005      **HB** \_\_\_\_\_

**SHORT TITLE** Create Indian Rights Water Settlement Fund      **SB** 172

**ANALYST** Aguilar

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |               | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------------|----------------------|---------------|
| FY05                    | FY06 | FY05                        | FY06          |                      |               |
|                         | NFI  |                             | Indeterminate | Recurring            | Indeterminate |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates House Bill 126  
Relates to House Bill 415 and House Bill 14

### REVENUE

| Estimated Revenue |      | Subsequent Years Impact | Recurring or Non-Rec | Fund Affected                       |
|-------------------|------|-------------------------|----------------------|-------------------------------------|
| FY05              | FY06 |                         |                      |                                     |
|                   | NFI  | Indeterminate           | Recurring            | Indian water rights Settlement fund |

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Office of the State Engineer (OSE)

### SUMMARY

#### Synopsis of Bill

Senate Bill 172 creates the Indian Water Rights Settlement Fund within the state reserves, provides for legislative approval of Indian water rights settlements and requires a status report from the Interstate Stream Commission by November 15 of each year.

### Significant Issues

SB-172 provides that upon congressional funding of the federal share of an Indian water right settlement the State Engineer would inform the legislature of the state's share and request approval of the settlement. Upon legislative approval, the Interstater Stream Commission would be able to expend money from the Indian Water Rights Settlement fund to implement the settlement.

The LFC in the interim has expressed concern that the settlement process does not include the legislature until after congressional approval of such settlements. The LFC seemed to view this as a problem that could prove critical to a settlement's successful implementation.

The state engineer agrees and notes the terms of such settlements typically provide for the construction of infrastructure projects and the acquisition of water rights to augment the existing supply of water. Many times this process begins many years after congressional approval of a settlement. At present, the state is not able to assure the settlement parties and congress that the legislature both approves of the settlement and guarantees that state funds will be made available on the schedule required by the settlement. This is due to the lack of a process for obtaining legislative approval under existing law until funding for the state's shares of costs is requested from the legislature. At present, the only way to obtain legislative approval and commitment to the implementation of a settlement is for the legislature to make the necessary appropriations years after congress has approved the settlement. The LFC has pointed out that it is possible that the parties and congress will discover that their settlement cannot be implemented when years later the legislature does not fund the state's share of the costs, either because it does not approve of the settlement, or because no funds are available to make the requisite appropriations at the time required by the settlement.

The state engineer has worked to address the legislature's suggestion the legislature be included in the settlement process early enough to ensure that the settlement process proceeds in a manner consistent with the legislature's intent. This bill proposes to provide the parties and congress with a statement of the legislature's approval so that they may proceed accordingly before a settlement is submitted to congress. It also provides the legislature with the option of setting aside the state's funds over a number of years to complement its existing authority to make lump sum appropriations.

### **PERFORMANCE IMPLICATIONS**

Senate Bill 172 will enhance the effectiveness of the state in negotiating settlements, since the state will pursue only those settlements receiving legislative approval

### **FISCAL IMPLICATIONS**

This bill creates a new fund that could require continuing appropriations. The LFC is concerned about including continuing appropriation language in the statutory provisions for newly created funds. Earmarking reduces the ability of the Legislature to establish spending priorities.

SB 172 does not identify a source or sources of revenue for the fund.

## ADMINISTRATIVE IMPLICATIONS

Some additional administrative burden would accrue to the ISC that relates to the ISC's administration and supervision of the projects being funded by the state. The ISC's role in reporting to the legislature and in administering the fund is intended to provide the legislature with oversight by an agency with the expertise to assure the prudent and legal expenditure of the funds expended under this act.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates House Bill 126  
Relates to House Bill 415 and House Bill 14

## TECHNICAL ISSUES

The State Engineer recommends the following changes for consideration by the legislature.

Page 1, line 18: after with word "congressional" insert "authorization of"

[Explanation: Under section B of this act, the state engineer informs the legislature of the settlement terms prior to congress' authorization of and commitment to fund the settlement. Upon congressional authorization, the legislature needs to be informed as quickly as possible of that action and of any substantive changes required by congress to the terms of the settlement. The state engineer therefore proposes this amendment to ensure that the legislature is informed in a timely fashion of any congressional authorization and of the expected state contribution. Since congressional funding of Indian water right settlements typically lags behind congressional authorization, without this amendment the legislature might not be notified in a timely manner of the expected state contribution to a settlement.]

Page 1, line 22: after the word "Upon" strike "approval of a settlement by"

[Explanation: This act contemplates that there will be legislative approval both prior to and immediately after action by congress. A joint resolution approving the ISC expenditure of funds would be the penultimate legislative act. The ultimate legislative act would be to appropriate the funds necessary to fully implement the terms of a settlement.]

Page 3, line 7: strike "that have been" and insert in lieu thereof "as"

[Explanation: This amendment is intended to clarify that the expenditures from the fund are to be consistent with the amount approved by the legislature, and to foreclose an interpretation that fund expenditures can vary from the amount actually approved as long as they are expended to implement a settlement approved by the legislature. This amendment recognizes and attempts to maintain the legislative check over agency expenditures.]

PA/yr